



THE ATTORNEY GENERAL
OF TEXAS

JIM MATTOX
ATTORNEY GENERAL

December 3, 1990

Mr. Ron Lindsey
Commissioner
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR90-569

Dear Mr. Lindsey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 10369.

The Texas Department of Human Services (the department) received an open records request from one of its employees for "all releasable [sic] documents pertaining to the recent investigation that you have concluded on me." You contend that this information comes under the protection of section 3(a)(3) of the Open Records Act.

To secure the protection of section 3(a)(3), a governmental body must first demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated. Open Records Decision No. 452 (1986). To demonstrate that litigation is reasonably anticipated, the governmental body must furnish evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. Id. The governmental body must show that the requested material relates to the anticipated litigation. See Open Records Decision No. 323 (1982).

You contend that section 3(a)(3) protects the requested records because the requestor and a second departmental employee have threatened, through their attorney, to sue another departmental employee, apparently in his individual capacity, for allegedly making "false and outrageous allegations" about the "sexual relationship and/or illegitimate children" of the two employees. You have submitted to this office a copy of the requestor's demand

of his claim. Consequently, you have met the first test for section 3(a)(3) protection.

You have not demonstrated, nor is it apparent to this office, how the contents of the department's records in any way pertain to the allegations contained in the demand letter. This office does not believe that the requested information "relates" to any reasonably anticipated litigation against the department for purposes of section 3(a)(3). You have raised none of the act's other exceptions to required public disclosure; you must, therefore, release the requested information in its entirety.

Finally, we note that the documents in question also contain information pertaining to departmental investigations of other employees. To the extent that this additional information falls outside the scope of the current open records request, it may be withheld.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-569.

Yours very truly,



Susan Garrison
Assistant Attorney General
Opinion Committee

SG/RWP/le

Ref.: ID# 10369
ID# 10386
ID# 10578
ID# 10623

Enclosure: Records Submitted
Tapes Submitted

cc: Frank Evans
Texas Department of Human Resources
Staff Development Specialist/016-3

Ed Horne
Assistant Attorney General
General Litigation